

FILED

OCT X 1 2002

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KEITH RAUL WILSON,

Petitioner,

vs.

DERRAL ADAMS, Warden,

Respondent.

No. C 02-3278 VRW (PR)

ORDER GRANTING
MOTION FOR
APPOINTMENT OF
COUNSEL

(Docs # 3, 4, 6 & 8)

Petitioner, a prisoner at the California Substance Abuse Treatment Facility and State Prison, Corcoran ("SATF"), has filed a pro se petition for a writ of habeas corpus under 28 USC § 2254. He has also filed a motion for leave to proceed in forma pauperis under 28 USC § 1915 and a motion for appointment of counsel under 18 USC § 3006A.

Petitioner pleaded nolo contendere to drug possession in the Superior Court of the State of California in and for the County of Santa Clara. It was also determined that petitioner suffered two or more prior "strike" convictions and, pursuant to California's Three Strikes Law, he was sentenced to 26 years to life in state prison. Petitioner unsuccessfully appealed to the California Court of Appeal and the Supreme Court of California.

In the instant pro se petition, petitioner simply alleges that he is entitled to federal habeas relief based on "cruel and unusual punishment," "ineffective assistance of counsel," and "change of law re: Prop 36." Petitioner explains in his motion for appointment of counsel (and declaration in support thereof), with

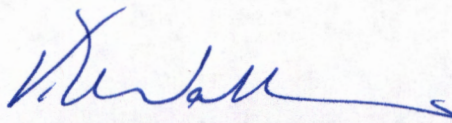
1 the help of another prisoner, that he is “mentally disabled” (suffering “from bi-
2 polar disorder”) and unable to allege facts in support of his claims due to his
3 disability and inability to access his state court records. He asks that the court
4 appoint him counsel under § 3006A and hold his petition in abeyance until
5 counsel is able to prepare and file an amended petition properly setting forth
6 specific facts and arguments in support of his claims.

7 Section 3006A(a)(2)(B) authorizes a district court to appoint counsel to
8 represent a habeas petitioner whenever “the court determines that the interests of
9 justice so require and such person is financially unable to obtain representation.”
10 Here, the court finds that petitioner is entitled to proceed in forma pauperis under
11 28 USC § 1915 and that he is financially unable to obtain representation. The
12 court also finds that this is one of those rare cases where it would be in “the
13 interests of justice” to appoint counsel: It appears that petitioner’s “disability”
14 and “inability” to access his state court records prevent him from properly
15 presenting his claims, cf LaMere v Risley, 827 F2d 622, 626 (9th Cir 1987) (no
16 abuse of discretion to deny appointment of counsel where pleadings illustrated
17 that petitioner had good understanding of issues and was able to present them
18 clearly and forcefully); Bashor v Risley, 730 F2d 1228, 1234 (9th Cir 1984) (no
19 abuse of discretion to deny appointment of counsel, although petitioner was over
20 60 years of age and had no background in law, where he thoroughly presented
21 issues in petition and accompanying memorandum), and that at least one of his
22 preliminary claims may have a substantial likelihood of success, see, e.g., Brown
23 v Mayle, 283 F3d 1019, 1037 (9th Cir 2002) (granting habeas petitions after
24 finding “three-strikes” sentences of 25-years-to-life sentences unconstitutional
25 for (1) shoplifting \$25 of merchandise and prior convictions for two residential
26 burglaries, two assaults with a deadly weapon and one robbery conviction; and
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1 (2) shoplifting three videotapes and prior convictions for four robberies, some of
2 which involved violence); Andrade v Attorney General, 270 F3d 743, 765-66
3 (9th Cir 2001) (granting habeas petition because "three-strikes" sentence of 50-
4 years-to-life for shoplifting nine videotapes worth a total of \$153.54, and three
5 prior non-violent burglaries violates Eighth Amendment), cert granted, 122 S Ct
6 1434 (2002). Accordingly, in the interests of justice, petitioner's motions for
7 leave to proceed in forma pauperis under 28 USC § 1915 (docs # 3 & 8) and for
8 appointment of counsel under 18 USC § 3006A (doc # 6) are GRANTED.

9 The Clerk shall send a copy of this order to the Federal Public Defender's
10 Office for their prompt selection of a qualified attorney to represent petitioner in
11 this matter. Selected counsel shall file an appearance as soon as he is selected
12 and, by no later than December 2, 2002, shall file a First Amended Petition for a
13 Writ of Habeas Corpus.¹

14 SO ORDERED.

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16 VAUGHN R. WALKER
17 United States District Judge
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26 ¹Petitioner's motion to hold the petition in abeyance and for leave to amend
27 after counsel is appointed (doc # 4) is dismissed as moot.
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